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APPELLATE COURT ENTERING JUDGMENT ON RESERVED QUESTIONS OF LAW.

With the exception of our editorial in 72 Cent. L. J. 147, on reform in judicial procedure, in which we considered proposed amendments to the Illinois Practice Act, we have confined our attention principally to what we deemed evils in our appellate system. We thought we had said about all the patience of our readers might stand on this subject and intended to begin with suggestions with reference to trials in courts of original jurisdiction; but our mind has been changed.

This change results from what we see in the congressional statute which was passed, we understand, by the lower house of Congress and, we think, by the senate, and is now the law governing the federal courts.

The last clause of this bill or act, as the case may be—and whether it is one or the other, does not deprive us of our text—says: "The trial judge may in any case submit to the jury the issues of fact arising upon the pleadings, reserving any question of law arising in the case for subsequent argument and decision, and he and any court to which the case shall thereafter be taken on writ of error shall have power to direct judgment to be entered either upon the verdict or upon the point reserved, if conclusive, as its judgment upon such point may require."

To present this, as we desire, it seems advisable also to show what the Committee of Fifteen of the "Illinois Conference on the Reform Law of Procedure and Practice," of which we wrote in our editorial cited *supra*, offers. That committee proposes to have added to Section 79 of the Illinois Practice Act, the following: "In any action or proceeding at law tried before a jury, if any one or more of the parties thereto moves the court to direct a verdict on any point of law conclusive of the whole controversy or of any substantial portion thereof, and if the court be in doubt as to any such point, such point shall be reserved and the verdict taken subject thereto, and thereafter the trial court and any other court to which the case may be taken by appeal, writ of error or certiorari may enter judgment, either upon the point so reserved or upon the verdict, as its view of the law on such reserved point may require.

"In any action or proceeding at law tried before a jury, if it appears that a different measure of relief or measure of damages should be applied to the case, depending upon which view of a doubtful question of law is ultimately ascertained to be correct, the trial court shall have power, and it shall be its duty, to submit the cause to the jury upon each alternative and to take its verdict thereon, with power in the trial court and in any court to which the cause may be taken on appeal or by writ of error or by certiorari, to render judgment upon the verdict taken upon that alternative, which is in accordance with the ultimate decision of the court in regard to such doubtful question of law."

Mindful of the fact that we are still considering, in our campaign for reform of judicial procedure, what pertains to appellate courts, we speak of the bill or act and the proposed amendment from a particular standpoint.

The federal practice under such a provision would not extend, necessarily, to all the things the Illinois amendment would embrace and the former might be deemed objectionable as containing something of a negative pregnant. Both provisions, however, would, we think, be a valid way of avoiding the constitutional guaranty of trial by jury, so far as reserved questions of law in their application to facts are concerned.

In Pennsylvania there is a provision existing in the practice act of that state which is as it was enacted in 1835. It reads as follows: "39. It shall be lawful for any one of the said judges (those of common pleas) when he thinks it expedient to reserve questions of law which may arise on the trial of a cause for the consideration and judgment of all the judges sitting to-

gether; provided that either party shall have a right to a bill of exceptions to the opinion of the court, as if the point had been ruled and decided on the trial of the cause." 3 Purdon's Dig., p. 3654.

In 1905, it was provided what course should be taken where a point requesting binding instructions has been reserved or declined. This course was to move the court to have all the evidence certified and filed and then move for judgment *non obstante veredicto* on the whole record. If the court does not grant a new trial it must enter the judgment that should have been entered upon that evidence. From this judgment "either party may appeal to the supreme or superior court, as in other cases, which shall review the action of the lower court and enter such judgment as shall be warranted by the evidence taken in that court." 5 Purdon's Dig., p. 5848, Sec. 7.

The Supreme Court of Pennsylvania decided that the later act intended in no way to disturb the line of distinction between the province of the court and that of the jury, that is, no judgment may be entered contrary to the verdict except where it would have been proper to give binding directions at the close of the trial. Shannon v. McHenry, 219 Pa. 267.

The 1835 provision of the Pennsylvania Act seems to have been construed in accordance with what the proposed Illinois amendment seems more specifically to aim at, than does the federal provision, though construction of the latter might make it embrace the same things; that is to say, to whatever the point of law reserved extended, to that extent, if opposed to the verdict, it should affect it. If the verdict as an entirety is wholly inconsistent with the point reserved, the verdict should be wholly set aside; if the inconsistency does not go to the entire verdict, this verdict should be corrected, in the judgment to be rendered, to that extent.

An example of correction of an improper verdict is furnished in the case of Gedusky v. Rubinski, 21 Pa. C. C. 549, where it stated so much for compensatory, and so much for punitive damages. The court entered judgment for the plaintiff for the compensatory damages and judgment for the defendant, *non obstante veredicto*, as to the punitive damages.

By many decisions under the statute of Pennsylvania, passed in 1835, it is held, as a general rule, that for a judgment *non obstante veredicto* the point of law must be reserved and the facts upon which it is based must appear properly in the record.

How would practice under such a system compare in final results in an appellate court—for that is only what we are now considering—with systems where it does not obtain? Happily we are not without some proof on this subject. Thus we have taken the 43rd volume of Pennsylvania Superior Court Reports and we find of 130 cases disposed of, that 116 were disposed of finally, that is to say, there or by remand with directions, and 14 were remanded for retrial by juries. In 228 Pennsylvania Supreme Court Report, out of 155 cases, only twelve were remanded for a second jury trial.

We venture to say that such a record of conclusive disposition in the appellate courts in America may scarcely be equalled elsewhere. It were too tedious to run this matter down, and after all, the local knowledge of our readers is better on this subject than any statistics we might present for their consideration.

The campaign we are urging, if it is to have any influence at all, must have it in persuading local bars and local judges to take up this subject, as it seems to have been taken up in the State of Illinois, a state, by the way, which, as we have heard, has less reason to complain of delay in the administration of justice than by far the greater number of her sister states.

This reservation of points of law, taking it, that they are either "conclusive of the whole controversy or any substantial portion thereof," as the proposed Illinois amendment expresses it, is in its nature akin to the partial new trial theory. It saves what has been rightly concluded and assists the court of final resort to a conclusive approval or condemnation, or both, by its judgment, thus exemplifying the maxim *interest reipublicae ut sit finis litium.*

In our succeeding contributions to the work this journal has entered upon towards helping to place American administration of law on the better basis which our civilization merits, we will consider practice and procedure in courts of original jurisdiction. C.

NOTES OF IMPORTANT DECISIONS

CORPORATIONS — REQUIREMENT OF STATUTE AS TO LIMIT OF INDEBTEDNESS AND LIABILITY OF DIRECTORS FOR EXCESS.—It appears by Kentucky law that among other things which must be stated by incorporators in their articles is "the highest amount of indebtedness or liability which the corporation may at any time incur." It is also provided that, "If the directors in office of any corporation shall fail or refuse to comply with or shall violate any of the provisions" of the article in Kentucky statutes relating to corporations, they shall be liable jointly and severally for resulting loss or damage to any person and additionally punishable by a fine of not less than $100 nor more than $1,000.

In the case of Randolph v. Ballard County Bank, 134 S. W. 165, it appears that a printing company, incorporated, became liable to a bank in excess of the limit of indebtedness stated in its charter. The bank sued the directors and recovering judgment this was affirmed in the upper court.

The court said: When the directors have availed themselves of a privilege accorded by law of doing business as an artificial person, they ought to know at least the legal limitations upon the powers of the corporate being by which they ply their business. When they exceed their legal powers or suffer their managing officer to do so, if, notwithstanding, they are as free from personal liability for such excesses as if they had strictly observed the statute and their charter limitation, then the statute imposing limitations is not a protection either to stockholders or creditors. Such a rule would be to place a premium upon negligence in directors of corporations; would reward their indifference to duty; would give them the benefit of such action if it turned out profitably for the corporation; but impose no liability on them if it turned out otherwise. The public policy is indicated by the statute."

This statute seems so salutary that we are glad to call attention to it. One of the evils—and a very serious one—in the commercial world is the exploiting of corporations where no individual risk is involved.

A limitation, such as Kentucky law provides for, will never embarass a corporation organized for legitimate conservative business and any other gets an undue advantage over those who risk their personal fortunes in business enterprises.

A statute of this kind compels directors, who are financially responsible, to attend to their duties and not allow their good names, figuring on corporate stationery, to be exploited by managing officers. As the law stands generally outside of Kentucky, there is as the Kentucky court well says, "a premium upon negligence." It is convenient to remain in ignorance of what is transpiring under the shadow of respectable names, while innocent creditors are being duped.

We imagine that the practical working of such a statute would be, generally speaking, that the smaller the sum stated as a limitation of corporate indebtedness, the better would be a corporation's credit in trade.

WHEN ALLOWANCES PENDENTE LITE WILL BE MADE TO THE WIFE, IN DIVORCE PROCEEDINGS, ALTHOUGH SHE HAS AMPLE CREDIT AND LARGE MEANS, BOTH REAL AND PERSONAL.

This subject must be considered in the light of statutory provisions, as well as equity and common law principles. The right to alimony pendente lite grew up under the usages of the Ecclesiastical Courts in England. It was thereafter recognized and enforced by the Chancery Courts, and has been catalogued as a common law right.[1] The law contemplates that the husband shall support the wife, and this duty continues during the pendency of an action for divorce, unless strong and convincing reasons are shown for discontinuing the same. Such allowances, however, are frequently abused. As said by Canty, J., in a forceful dissenting opinion, of the Supreme Court of Minnesota: "It is well known that the great gallantry of some courts in allowing very liberal alimony and attorneys' fees before a trial on the merits offers a great

(1) McGee v. McGee, 10 Ga. 477, 485; Steihm v. Steihm, (Minn.) 72 N. W. 485.

inducement to some lawyers to advise their clients to commence divorce proceedings on the slightest provocation, and to some wives to take that way of avenging themselves whenever they may become vexed at their husbands. Being too ready to award temporary alimony and suit money before trial offers a premium on divorce."[2]

The matrimonial adventuress, who regards marriage as a simple contract, or a "bargain-counter trade," and who looks upon divorce as a mere matter of course or a piratical expedition for property gain,—is not worthy of much consideration. She is a species of feminine degeneracy,—sometimes the product of pampered life and lavish luxury,—encouraged in some places by distorted notions of modern society, but not approved by the general public and wholly opposed to the moral impulse and uplifting trend of the age. It is quite different with the woman who, with real affection, has unfortunately entrusted her heart and hand to some miserable make-shift in the garb of a man, and who for instance is the mother of his children and with toiling care has raised them, and is driven by his cruelties or infidelity into the courts of justice; or, who, without provocation or fault on her part, is dragged into the divorce court and subjected to unpleasant publicity by his precipitate and unfounded suit, in an effort to force her into an absolute separation.

So the nature of the charges and answers in the suit, the situation of the parties and all of the facts disclosed thereby, may be considered by the court in ascertaining the character and magnitude of the case and the probability of when the same will be tried, in order to reach an equitable conclusion as to what would be a reasonable allowance if any, under the circumstances.[3] But the merits of the case should not be thrashed out on the hearing for temporary alimony.[4]

(2) Steihm v. Steihm, supra.

(3) Cowan v. Cowan, 16 Pac. 215; McCue v. McCue, 149 Ind. 466.

(4) For instance, allegations of the wife's misconduct, and proof that she is partly in fault, will not defeat her application for money pendente lite. McFarland v. McFarland, 51 Iowa 565; Methvin v. Methvin, 15 Ga. 97, 60 Am. Dec. 664. So a wife in prison has been allowed alimony pendente lite. Kelly v. Kelly, 4 S. & T. 227, 32 L. J. Mat. Cas. 181.

General Rules and Practice.—Without deviating too far from the main subject, the author desires to briefly discuss some of the general rules governing applications of this kind, as preparatory to a better understanding of the leading question involved in this article.

It is the general rule that it must appear that the wife is without means to maintain herself or to enable her to conduct her suit or defense.[5] But the scope of this rule has been cut down by a multitude of exceptions. The station in life of the parties, the availability of the wife's means, the discretionary and enlarged powers given the courts by statutory enactments, as hereinafter discussed, divert, modify or defeat the application of this rule in the majority of cases. Of course, money ordered paid for the support of minor children stands on a different footing. It is the duty of the husband to support his minor children, whether his wife has available means or not, and whether she wrongfully refuses to live with him or not; and if he permits them to remain with her pending the suit, the court may require him to pay for their support.[6]

In order to defeat temporary alimony and expense money, the wife's means must be sufficient, available and in her own right. The fact that her parents are able to support her, or prevent her from suffering, does not relieve the husband of his responsibility.[7] And the fact that the husband has provided for his wife's support in the past and promises to do so in the future does not divest the court of authority to award temporary alimony if the circumstances of the case demand it.[8] But an allowance pendente lite has been refused where the

(5) 2 Amer. & Eng. Ency. Law, 105, and cases cited; Glen v. Glen, 44 Ark. 46; Turner v. Turner, (Cal.) 22 Pac. 72; Haddon v. Haddon, 36 Fla. 413, 18 So. 779; Kenemer v. Kenemer, 26 Ind. 330; Ross v. Ross, (Mich.) 10 N. W. 193; Porter v. Porter, 41 Miss. 116; Anthony v. Anthony, 9 N. J. L. 369; Collins v. Collins, 80 N. Y. 1; Shoemaker v. Shoemaker, 5 Pa. Dist. 449; 17 Cent. Dig. tit. "Divorce," Section 616.

(6) Steihm v. Steihm, supra.

husband permitted his wife and children to remain and live in the family residence and paid all the running expenses of the same." In a New York case,[10] the application was denied where the father of the wife had agreed with the husband to provide for her support with an understanding that the husband would make no claim for her services.[11] This case occurs to the author as a very odd one; and while many courts and text-writers lay down the rule that where the husband has made ample provision, no temporary allowance will be made, it would seem that the better policy would be for the court to make the order, which it may enforce by contempt proceedings, than to let the husband disarm judicial action and fix the allowance according to his whim or caprice.[12] It is to be observed, however, that these cases are predicated upon the proposition that the provision made by the husband is *ample*. In other words, these cases advance good conclusions deduced from bad premises. It was Thomas Paine, who said, "England lost her liberty by right reasoning from wrong premises."

It is the policy of the courts, even where the parties are poor, to compel the husband to pay something for the wife's support pending the litigation.[13] In the Cyclopedia of Law and Procedure[14] is the following statement upon the husband's poverty: "In an action by a husband against his wife for divorce, his poverty is no defence to an application for temporary alimony, since he should not be permitted to prosecute the action if he cannot furnish the wife with means to make her defence; but where the suit is brought by the wife, the husband's poverty may be pleaded by him in defence to the application." But it has probably been the experience of most lawyers, and undoubtedly is the general position of the courts, that the poverty of the husband is not counted for much, whether he be plaintiff or defendant, *if he is able-bodied*. The ability of the husband to earn money and work, and his prospective income, and his want of means and credit, his health and age, will always be taken into account in fixing the amount of the allowance.[15] If he is crippled and incapacitated by physical infirmities, the same will naturally be considered; and if by reason of his afflictions or age, he is unable to work, and has no means, a very just case would be presented where temporary allowance should not be made.

Wife Not Compelled to Exhaust Corpus of Her Estate.—The courts, with various explanations, and oftentimes with much hesitation and reluctance, have adopted the rule that the wife need not resort to or exhaust the corpus or capital of her estate before claiming alimony pendente lite.[16] This is especially true where the husband possesses great wealth, although the wife enjoys in her own right valuable properties.[17] An allowance pending the action will ordinarily not be refused because the wife has a separate estate, where it is shown that the income derived therefrom is insufficient for her support.[18] Bishop on Marriage and Divorce,[19] says: "Where the

(7) 2 Amer. & Eng. Ency. Law (2nd Ed.) p. 107.

(8) 14 Cyc. 755, note 75, citing: Pinckard v. Pinckard, 68 Am. Dec. 481; Anderson v. Anderson, 69 Pac. 1061.

(9) McCloskey v. McCloskey, 68 Mo. App. 199.

(10) Bartlett v. Bartlett, Clarke (N. Y.) 460.

(11) Coles v. Coles, 2 Md. Ch. 341, resembles the Bartlett case.

(12) Pinckard v. Pinckard, supra. The case of Cowan v. Cowan, (Col.) 16 Pac. 215, hereinafter discussed, is a strong case on this proposition.

(13) Lane v. Lane, 22 Ill. App. 529; Muse v. Muse, 84 N. C. 35; Mangels v. Mangels, 6 Mo. App. 481; Hallock v. Hallock, 4 How. Prac. (N. Y.) 160; Coehn v. Coehn, 11 Misc. (N. Y.) 704, 32 N. Y. Suppl. 1082.

(14) Vol. 14, p. 755, citing a multitude of cases.

(15) Hallock v. Hallock, supra. Campbell v. Campbell, 37 Wis. 206.

(16) White v. White, 50 Ill. App. 149; Miller v. Miller, 75 N. Car. 70; Bailey v. Bailey, 127 N. Car. 474, 37 S. E. 502; Hoffman v. Hoffman, 7 Robt. (N. Y.) 474; Merritt v. Merritt, 99 N. Y. 643, 1 N. E. 605.

(17) Harding v. Harding, 32 N. E. 206; Cooper v. Cooper, 56 N. E. 1059; Campbell v. Campbell, 73 Iowa 482, 35 N. W. 522.

(18) Killian v. Killian, 25 Ga. 186; Harding v. Harding, supra; Campbell v. Campbell, supra; Cooper v. Cooper, supra; Potts v. Potts, 68 Mich. 492, 36 N. W. 240; Ross v. Griffin, 53 Mich. 8, 18 N. W. 534.

(19) 6th Ed., Vol. 2, p. 392.

separate means of the wife are partly adequate, the court will decree what will supply the deficiency. If she has enough for her own support, but not to meet also all the expenses of the suit, the court will give her the latter."[20]

But the question has often been proposed: Should the wife be first required to mortgage or sell her property, where the husband proffers to join in the same and to procure a loan on reasonable terms or a purchaser for a fair and good price? This is a question upon which the courts have differed, but the trend of modern decisions and the better reasoning irresistibly answer this question in the negative. In reason, it would be a palpable outrage to compel the wife to sell or mortgage her property for the purpose of support and suit money pending an action for divorce. Of course, where the husband is plaintiff, then it should be his absolute duty to support the wife pending the suit, no matter what the charges are, unless he is physically prevented by disease from work and is wholly poverty stricken.[21] But where the wife is plaintiff, the question should simply be whether she has income sufficient to meet the demands for support and legitimate expenses during the litigation. The law does not contemplate that the wife shall dismantle her home, divest herself of heirlooms, jewelry, personal effects and household goods, or first seek relief at the pawnshop or money broker, or mortgage the roof above her head or sell her property, before resorting to the income of the husband, and particularly where the husband is possessed of ample means. To say that she *must* would be an odious travesty on justice. In fact, the cases which hold that the wife's separate property defeats temporary alimony, disclose, when analyzed, that they refer to the income and not to the corpus of her estate. That is, they take the position, that if her income is sufficient, an allowance will be denied. They do not take the position that an allowance will be refused because she could sell or mortgage her property and thereby equip herself with ample means. As said in Harding v. Harding,[22] "Alimony, in its technical sense, related to income,—a sum to be paid from the income of the husband,—not by the exhaustion of the corpus of his estate." Non-productive property would not be available to the wife except by selling or mortgaging the same. This she is not bound to do by the great weight of authority and the better reasoning. As stated in a leading and famous case, involving wealthy litigants,[23] "Whether temporary alimony should or should not be allowed, does not depend on the wife's ownership of non-income producing property."

The case of Harding v. Harding, *supra*, is squarely in point. There the wife had an annual income of little less than $1,000, while the husband had an income of about $30,000. The court allowed her $300 per month temporary alimony, $1,000 for counsel fees, and $400 for expenses of suit. The court with emphasis denied the proposi-

(20) See also Holmes v. Holmes, 2 Lee 90; Rose v. Rose, 53 Mich. 385; 2 Amer. & Eng. Ency. Law, (2d Ed.) p. 176, citing: Gruhl v. Gruhl, 123 Ind. 86; Sellers v. Sellers, 141 Ind. 305. While this last authority cites these Indiana cases, yet the Supreme Court of Indiana has never decided that the wife shall not mortgage or sell her real estate where the husband procures a purchaser or mortgagee therefor and proffers to join in the same; but reading between the lines of these cases, it would seem that the court would probably hold, if it became necessary, that the wife need not mortgage or sell her property before calling upon the means of the husband. But some of the circuit courts of that state, to the knowledge of the author, have refused to grant an allowance where such proffers were made by the husband, while other circuit courts of that state have taken the position that the husband's duty to support is such that he cannot escape temporary support by the mere fact that the wife has property or that the husband has proffered to get her a purchaser or a mortgagee for the property and offered to join in the execution of the same. See, also, in support of the proposition that the court will require the husband to make up the deficiency in the wife's property, in order to properly support her pending the suit and covering her expenses, the cases of D'Aguilan v. D'Aguilan, 1 Hagg. Ec. 773.; Rose v. Rose, 11 Paige (N. Y.) 166; Beavan v. Beavan, 2 Swab. & T. 652.

(21) Rublinsky v. Rublinsky, 24 N. Y. Suppl. 920; Lane v. Lane, 22 Ill. App. 529; Muse v. Muse, supra; Ward v. Ward, 21 N. Y. Suppl. 795, 29 Abb. N. Cas. (N. Y.) 256.

(22) 32 N. E. 206.

(23) Cooper v. Cooper, 56 N. E. 1059. (Illinois case.)

tion that the wife must first exhaust her own means. The following language is used: "Some adjudged cases are to be found going to the extent of holding, with more or less directness, that no allowance will be made from the income of the husband, while the wife has property remaining which she may subject to the payment of the expenses of the litigation, and to her support. They are, however, opposed to the great weight of authority, and cannot be considered as authority in this state. * * * But if the husband has committed breaches of his marital obligations entitling her to a divorce, * * * she is entitled to be maintained and supported consistently with her station in life, and the ability of the husband, if the money required therefor be not more than a just and equitable proportion of the joint income of herself and husband." The court argued that it was *just* that the wife, who was prosecuting her suit in good faith, should be placed upon an *equality* with the husband; and if her income was insufficient to carry on the litigation, his income would be required to contribute, before she would be compelled to exhaust her estate. The court concludes by laying down the proposition that if the income of the wife is insufficient, and that of the husband be ample, such a sum should be allowed from the husband's income as would, when added to the wife's, enable her to live comfortably, pending the litigation *"in the station in life to which he has accustomed her."*

"The station in life to which he has accustomed her." These are significant words. In determining the right of temporary alimony and suit money, the court should consider the social and financial standing of the parties, the manner of their living, and the habits of life to which they have been accustomed, and in particular the manner and luxuries in which the husband has indulged the wife. In other words, where the husband possesses wealth and large properties, and has surrounded his wife with a luxurious home and maintained her upon a luxurious scale, in keeping with his wealth and financial standing, the court, on an application of this kind, ought not to reduce her to a lower station in life, by denying a temporary allowance because she is possessed of property in her own right. Instead, the courts will endeavor to make such an allowance for her, pending the suit, as will reasonably maintain her within that station in life to which she has been accustomed on account of the social standing and financial ability of her husband. This is clearly emphasized in the case of Harding v. Harding, just commented upon.

In Cooper v. Cooper,[24] the husband was a member of the firm of Siegel, Cooper & Co., of Chicago, and was estimated to be worth $1,500,000. The court made an allowance pendente lite of $600 a month for the wife, and $1,500 for suit money. In resisting the wife's application for these allowances, the husband showed that the wife had been extravagant; that in the November preceding he sent a check to the wife for $500; that in the October preceding he gave her $1,000; that since the suit was brought he had paid debts of the wife aggregating $557.92; that he had permitted her to use his horses and carriages; that she received $11,000 in cash derived from her father's estate and still had the same; that she had at least $15,000 worth of jewelry and silverware which he had purchased her; that she owned a farm in Iroquois County, Illinois, worth $8,000, from which she received an income; that she owned 25 or 30 lots in the town of Sheldon, Illinois, of considerable value, and a whole or half interest in a cultivated farm of 300 acres near the city of Dallas, Texas, which he gave her, and from which she received an annual income; that she also owned 11 shares of stock in a Chicago City Railway Company, each of the par value of $100, on which she was receiving 6 per cent dividends. Notwithstanding this showing, the order of the trial court for temporary alimony and suit money was sustained by both the Appellate and Supreme Courts of Illinois. The higher court, speaking of the facts surrounding this case, said: "It is apparent that the appellant is very wealthy,

(24) 56 N. E. 1059.

and that appellee has, while living with her husband, been accustomed to having large amounts expended on her account. * * * It appears from the affidavits that appellant provided horses and carriages for the use of the appellee, which, in view of the appellant's means, certainly cannot be said to have been unsuited to her condition in life." The wife possessed many thousand dollars' worth of bric-a-brac, chinaware and furnishings, but the court held that she was not compelled to exhaust the corpus of that property for the purpose of securing support in maintaining herself in the station in life to which her husband had accustomed her.

In Campbell v. Campbell, an Iowa case,[25] the wife was plaintiff in an action for divorce and made an application for allowance, to enable her to defray the expenses of prosecuting her suit. The court made an order allowing her $350, and from that order the husband appealed. The evidence disclosed that the wife owned 120 acres of land and a small amount of personal property. Only a part of this land, however, was improved. The court sustained the order, admitting that there was some doubt as to the wife's necessities, but holding that the nisi prius court had not abused its discretion.

In Cowan v. Cowan, a Colorado case,[26] the husband possessed property of the value of $20,000. It also appeared that the complaint was filed on November 15th, 1885, and the application for allowance was filed on June 1st, 1886, and during that period (seven months), the husband had furnished the wife $750 for living expenses. It also appeared that she had $300 in money, but desired to retain it against sickness and other contingencies. The wife admitted these facts. The husband disclosed to the court that during this period he had given his wife securities, moneys and credits amounting to $1,092.54, and that he had made arrangements with merchants and dealers in the city of Denver to supply his wife and children with all proper clothing, food and supplies, and so notified her. In addition, he had supplied and proffered to continue to provide for his family an excellent and spacious home without any cost to them. Nevertheless, the court ordered him to pay, within fourteen days, $300 for attorneys' fees, and $50 for the personal use of the plaintiff, and $100 for court expenses, and that thereafter, pending the case, he should pay to plaintiff and children $25 per month until the case was decided. This order was sustained by the upper court of that state.

It may be said that the foregoing are extreme cases. This is true, but they illustrate the growth of the law on this subject. The development of the law, expanding and ingeniously varying, to meet changing and new conditions of life and business, is an all-absorbing subject. The growth of Anglo-Saxon jurisprudence has been stubborn but progressive, principles have been hewed out and precedents oftentimes established over cases involving insignificant amounts—but now and then it requires an extreme case involving multiplied sums and vast properties, to strike the keynote of a just rule, or to call from hiding some latent or almost forgotten principle, which, when set in motion, meets the requirements of the new crisis.

After all of the extravagant features of these cases have been eliminated, including the large allowances made; and the glare of wealth and frills of luxury and seeming prodigality of the wives and their excessive demands and lavish living, have been placed in one column, and the reasoning of the courts culled out and placed in another column, the books fairly balance, and it becomes manifest that a very just rule has been laid down and followed by the judges. It must be conceded that their conclusions are not supported by any uniform line of authorities. But when we remove the logic and thought of these decisions from the wealth and extraordinary environments of the litigants, (some of which dazzle the average layman), we find the courts establishing the salutary doctrine that the wife

(25) 73 Iowa 482, 35 N. W. 522.
(26) 16 Pac. 215.

is not compelled to exhaust her own estate before calling for assistance from the husband. The application of this doctrine must necessarily expand and vary with the increasing wealth of the parties to each case. It is easy to see how an abuse of this rule, in cases where the wife has considerable property, would be followed with mischievous consequences, but in such matters much must be left to the discretion of the trial court.

Effect of Statutory Enactments.—Underlying all of these cases is the idea of "discretion." This is made especially true by statutory enactments. The right of alimony, as heretofore suggested, originated in the Ecclesiastical Courts. It was then recognized in chancery courts, until gradually it has become a part of the law governing divorce proceedings. The equity rule was much stricter, and the wife had to be practically without means before obtaining relief. Most of the statutes in the various states provide for temporary allowances, using such words as *"in its* (the court's) *discretion"* and that *"the court may make such orders relative to the expenses of such suit as will insure to the wife an efficient preparation of her case and a fair and impartial trial,"*[27] and *"when it is just and equitable,"* etc.[28] Such statutes have been held to vest the trial court with a sound legal discretion,[29] and to broaden the powers of the court.[30] In Steihm v. Steihm, a Minnesota case, the parties were poor. It appeared that the property of each was about $400. The bulk of the wife's property consisted of good and collectible promissory notes, which were then due. The husband offered to procure for her the money for two of them amounting to $200. The court ignored this offer, and made an allowance of $25 attorneys' fees, and $12.50 for witness fees, and $8 per month for the support of the wife and their children pending the suit. The Supreme Court of Minnesota held that the equity rule was a little stricter, and that one of the essentials there was that the wife should be destitute of means, but that the enactment of the statute enlarged the discretion of the court. Among other things, the court said: "The rule seems to be that, while the fact that the wife has separate property is a circumstance to be considered in determining the application for temporary alimony, if it is not sufficient to support her, and enable her to prosecute her suit, or make the proper defence, the court will compel the husband to supply the deficiency. The fact is *not necessarily controlling.*" The statute in question in that case provided that the court *in its discretion* could require the husband to pay any sum necessary to enable the wife to carry on or defend the action and for her support pending the same.

As illustrating to what extent the courts have gone without abusing their discretion, attention is called to the case of Meyer v. Meyer.[31] In that case an order was made requiring the husband to pay to his wife alimony pendente lite, $125 per month, and $200 counsel fees. There was one son, aged 12 years, who lived with the mother. The wife's father had conveyed to her a house and lot worth $30,000, yielding a monthly rental of $135. Two weeks after the suit was brought she undertook and tried to convey the property back to her father without any consideration, but continued to enjoy and receive the rents therefrom. The husband's net earnings were $275 per month; his personal expenses were $150 per month. He owed $600. The higher court held that the allowance should be made, but in view of all the circumstances of that case, it should be reduced to $50 per month, instead of $125 per month. It is true that in that case the husband brought the suit, and the wife was not a volunteer, which had some bearing on the ruling, but was not the controlling fact by any means, as an examination of that decision will show.

(27) Minnesota, Steihm v. Steihm, supra, as to statute using word "discretion," etc. R. S. Indiana, 1901, Sec. 1054, as to last form of words quoted.

(28) Illinois, Harding v. Harding, supra.

(29) Campbell v. Campbell, 50 S. W. 849.

(30) Steihm v. Steihm, supra; Sellers v. Sellers, supra; McCue v. McCue, supra; Gruhl v. Gruhl, supra.

(31) 52 Pac. 485.

It is plain from the cases pertinent to this subject that, in matters of this kind, the courts have passed from the period of fixed and arbitrary rules, to the "discretionary stage." This relief has come about not from statutes alone, but from the tendency of modern decisions to give heed to all the circumstances clothing each particular case. But the majority of the opinions, as well as the treatises of the best authors, encumber the doctrine contended for in this article, by suggesting innumerable explanations and diversified limitations, until, at this time, it is out of the question to define or describe any specific rule or "yard stick," so to speak, as a criterion in every case. A wide latitude ought to be allowed the trial courts in acting on applications for suit money and temporary alimony. And after a resumé of the foregoing authorities, the following general propositions may be safely laid down: 1. That the courts are not bound by any absolute rule, but may exercise a sound legal discretion, under all of the facts at hand, in making allowances pendente lite. 2. That the old rule that the wife must first be substantially destitute of means, before an allowance is granted, has been largely abrogated by latter day decisions and statutory enactments. 3. That non-income producing property owned by the wife will not defeat her application. 4. That she is not required to first exhaust the corpus or capital of her estate, by mortgage, deed or otherwise, before asking relief. 5. That the proffer of the husband to procure a purchaser or mortgagee for her property, and to join in the execution of the deed or mortgage, will not of itself defeat an application for temporary alimony or suit money. 6. That the station in life of the parties may be taken into account,—not only in fixing the amount of the allowance, but in determining whether the wife should have an allowance notwithstanding she possesses property, both real and personal, in her own right. 7. That where the parties are wealthy, the courts will ordinarily compel the husband to pay suit money and temporary alimony in such sums commensurate with his financial ability and their station in life, notwithstanding the fact that the wife owns available and income-producing property. 8. That in this latter class of cases, the courts will guage the amount of the allowances by the amount of the wife's income, making the allowance more or less according to whether the wife's income is available, small or large.

WALTER J. LOTZ.

Hammond, Indiana.

DIVORCE—CONFESSIONS.

HOWARD v. HOWARD.

78 Atl. 195.

Court of Chancery of New Jersey, February 19, 1910.

In an action by a wife against her husband for divorce for adultery, his confessions of guilt, made to his wife and her sister, though sufficient to convince to a moral certainty, are insufficient without further corroboration to sustain a decree.

WALKER, V. C. This is an ex parte divorce case for adultery. Marriage and residence are clearly proved. The master reports that in his opinion "all the material facts charged in the petition relative to the charge of adultery are true, and that a decree for divorce should be made for the cause of adultery." That the charge of adultery is proved to be true, because the defendant has confessed it, I may admit; but his confession, or rather confessions, are insufficient in law to prove the commission of the offense, as will hereafter appear.

The proof of adultery lies in confessions of the defendant and his paramour. Of course, the confessions of the paramour are not evidence when made out of the presence of the defendant. Doughty v. Doughty, 32 N. J. Eq. 32; Berckmans v. Berckmans, 16 N. J. Eq. 122; Hurtzig v. Hurtzig, 44 N. J. Eq. 329, 337, 15 Atl. 537; Graham v. Graham, 50 N. J. Eq. 701, 25 Atl. 358. The confessions of the paramour, relied upon in this case were made in the absence of the defendant. She signed a confes-

sion which was written by the petitioner, and her signature was witnessed by a woman whom the petitioner called in for the purpose. This was after the defendant had left the petitioner; he having left before she discovered his infidelity.

As to the defendant's confessions of guilt: These were made to his wife and her sister. They do not appear to have been collusive; but, nevertheless, they are not such evidence as, under our law, will support a decree.

Chief Justice Beasley, sitting as master in Jones v. Jones, 17 N. J. Eq. 351, at page 352, said: "The approved rule of law appears to be that a divorce will not be granted when the admissions of the criminal party constitute the entire basis upon which to rest the conclusion of guilt. Such evidence, it is said, may convince to a moral certainty; but it does not fill the measure of legal proof. That such a standard for legal judgment could not safely be adopted is apparent, when we consider the ease with which the entire case could be similated by colluding parties. The precedents, therefore, wisely require something more than the naked declarations of the defendant."

Perhaps the leading case in this state on the question of confessions is that of Summerbell v. Summerbell, 37 N. J. Eq. 603.

Vice Chancellor Grey, in Perkins v. Perkins, 59 N. J. Eq. 515, 517, 46 Atl. 173, 174, speaking of Sumerbell v. Summerbell, said: "In that case the opinion of Barker Gummere, Esq., as master, collates and comments upon the case in a manner so thorough and discriminating as to be of the utmost value. The opinion of the Court of Appeals affirming the decree advised by him discusses the special facts shown."

While the particular point upon which Summerbell v. Summerbell turned was presumption of coercion on the part of a husband concerning a wife's confession of adultery written in his presence, the learned master in his opinion reviews the law of confessions generally and holds that they are not conclusive in and of themselves, and that, whether made by husband or wife, cannot be made the basis of a decree unless strongly corroborated. See Summerbell v Summerbell, supra, at page 605 et seq. of 37 N. J. Eq. See, also Kloman v. Kloman, 62 N. J. Eq. 153, 156, 49 Atl. 810, in which Vice Chancellor Reed holds that corroborating evidence to support a confession must be in respect of the act charged. See, also, Perkins v. Perkins, 59 N. J. Eq. 515, 46 Atl. 173.

As there is no legal evidence of the guilt of the defendant, the adultery is not proved, and the divorce must be denied.

NOTE.—*Liberal Construction of Statute as Excluding Confessions as Evidence in Divorce Cases.*—There seems practically no dispute against what the principal case decides. Possibly some courts are not quite so strict as it is. But it would seem, if state policy is indicated by statute at all, this will be liberally construed so as to practically take away all effect from confessions or admissions as evidence, even if formally they should not be deemed incompetent. Authority on this seems not very abundant, but we submit a few cases.

In the case of Trough v. Trough, 59 W. Va. 464, 53 S. E. 630, 4 L. R. A. (N. S.) 1185, 115 Am. St. Rep. 940, it was contended that admissions by defendant (husband) of criminal conduct made in the country were incompetent evidence. As a general proposition, the West Virginia Supreme Court of Appeals thought they could be considered, but standing alone they were insufficient for a decree, citing Bishop on Marriage and Divorce, §§ 707, 730. Nelson on Divorce, § 781, states the rule to be that: "While not alone sufficient to warrant a decree, it is admissible in connection with other evidence, unless a statute forbids." With this class of authority the West Virginia court proceeds to inquire whether the statute of its state "bars such evidence wholly." That statute says: "Such suit shall be instituted and conducted as other suits in equity, except that the bill shall not be taken as confessed, and whether the defendant answer or not, the case shall be heard independently of the admissions of either party in the pleadings or otherwise." The court argues that "if an admission or confession in an answer is of no avail, why shall we say that one made in the country is? Can a decree be had thus by indirection when it cannot by an answer or confession?" Then it says the word "otherwise" shows the policy of the law and makes all admissions or confessions "count nothing."

This statute being taken from Virginia, decision of that state prior to the statute's adoption by West Virginia was considered, but it was said the decision *seemed* only to hold adverse to this view and was not well understood anyway. See Bailey v. Bailey, 21 Gratt. 43. This case was, after adoption by West Virginia, of the statute, overruled in Hampton v. Hampton, 87 Va. 148, 12 S. E. 340. This suggests that possibly it is not always wise to take from another state a statute, because an old construction, however erroneous it may afterward appear to be, becomes fastened upon it in the adopting state.

In Texas the statute provided that the decree "shall be rendered upon full and satisfactory evidence independent of the confession or admission of either party." It was held that "the confession of defendant was entitled to no weight whatever in deciding upon the merits of the plaintiff's case." Matthews v. Matthews, 41 Tex. 331.

In Indiana, where a statute read that: "No sentence of nullity of a marriage shall be pronounced solely on the declarations or confessions of the parties; but the court shall, in all cases, require other satisfactory evidence of the existence of the facts on which the allegation of nullity is founded," the court discusses the meaning of the statute. It said: "The object of the statute being to prevent collusion on the one hand and extorted testimony on the other, the court, being satisfied that neither of those existed in this case, may have felt at liberty to

give to the confessions of the party the weight of evidence and thus 'take the case out of the statute.' Upon this class of cases we are not of opinion that such a discretion in the court is compatible with sound policy or the intention of the legislature." Then the court ruled that the statute meant that parties must "produce satisfactory proof aside from their own declarations, thus cutting off all chance of imposition in the obtainment of these decrees." McCulloch v. McCulloch, 8 Blackf. (Ind.) 60.

This case is one of the kind that would let in the evidence against the objection of incompetency, but would not allow it to become sufficient by mere corroboration. The other evidence must be satisfactory in and of itself. We commend the spirit of the decision, but cannot help feeling the statute is somewhat badly phrased. C.

CORRESPONDENCE.

REMOVAL OF SUITS FROM STATE COURTS TO FEDERAL COURTS ON GROUNDS OF DIVERSE CITIZENSHIP.

Editor Central Law Journal:

I opened your publication of the 17th Feb., and read the article appearing on page 113, entitled: "DISBARMENT—USING A SHAM CORPORATION TO CREATE DIVERSITY OF CITIZENSHIP."

I want to commend you for this article. One of the crying outrages perpetrated by Congress upon a long suffering people has been the vesting of corporations with the power to remove their causes to the Federal courts, irrespective of the nature of the cause of action.

An examination of the trial calendar of any of the circuit courts will disclose that the bulk of business there transacted is the result of foreign corporations securing removal of causes commenced in the state courts.

Not long ago I examined a court calendar containing three pages about the size of your law journal, and on which appeared something like one hundred cases set for trial; about eighty-five of them were suits commenced by private citizens in state courts to recover damages from foreign corporations.

Any domestic corporation must answer for its torts, breaches of contracts, bad faith, infractions of law and any derelictions to the courts of the state. Every natural person must do the same thing, but the legislation authorizing removal of causes on account of diversity of citizenship is a very highly esteemed special privilege acquired and enjoyed by corporations, and the great carrier corporations of the country use this federal statute as an open doorway from which to escape responsibility for their acts.

To fairly illustrate the effect of the present system: Let us suppose that a farmer is authorized to take up trespassing animals found upon his land at the place and time of the trespass. Next, let us suppose that the law made a provision that if the trespassing animal was owned by an individual not living in his school district, that in such case he must first turn the animal loose in an unenclosed wilderness, permit it to roam twenty miles from home, and then the law would give him permission to catch it if he could. The world would immediately point to the folly of such a statute as being ridiculous, dishonest and unfair and a discrimination in favor of the non-resident of his school district.

In the case of a domestic corporation or a private citizen relief is afforded where the party can be found and service obtained upon him, or where the accident or injury occurs, and right there they sit down together and arbitrate or lock-horns and go to battle with the home court as their referee, and the confines of their territory limited to the scope of a county, with the right to take depositions or bring witnesses from all parts of the globe. But forsooth, it chances to be a foreign corporation, no longer is the right to apprehend the trespasser within the confines of this corral of the farmer's own community or bailiwick, but the corporation can jump the bounds of the county fences and go to a court with state wide or district wide meanderings, and attend court sixty miles from home at the capital. Then he can attend the next session of court at some other court town one hundred and fifty miles from home, and the next time at two hundred miles from home at another court town, and follow the judge around the circuit of his district. Leg weary, tired, worn, sleepless and purse lean at last he gets trial, to find the marginal boundaries of the state do not limit the resources of this foreign corporation, but he must follow his appeal to St. Louis, St. Paul, Washington, D. C., New York, or what not, and that his representatives in the personality of cow-boys, lawyers or whatsoever they may be, must ride to unfamiliar fields and strange roads where they so seldom practice and with which they are so little familiar, known as Federal Practice, procedure, legal, equitable, civil, special and peculiar, blended in part with the recognition of state law and the capacity to ignore and set the same aside at will, without responsibility to the very authority which it pretends and purports to recognize. As a matter of quasi comity, there is a pretense at enforcing and recognizing state laws, but federal judges are not responsible to the state or to the powers of the state, to the people of the state or to state institutions for their authority, and when therefore, they see fit to ignore state laws there is no responsibility attached thereto, and the world simply smiles and attributes the act to the general superiority of the federal government over the state; the right of Powers That Be to recognize or ignore the inferior branches of our sovereignty at the sweet will and pleasure of the particular judge who is trying the cause.

To illustrate: Not long ago a United States judge tried a case where two workmen on a hand-car going along a high trestle about two hundred yards long, adjoining a bridge of somewhat greater length, were run down by a fast running engine and tender. Proof was available that the brake on the engine was out of order, and the engine should have been in the repair shop; that the same could not possibly be controlled by the engineer in charge thereof. The accident had so sickened the engineer with the conduct of corporations generally and the cold-blooded manner in which they put their men to work with defective devices and let them take their chances, that he quit the road entirely.

The Oklahoma Constitution provides: "The defenses of contributory negligence or of assumption of risks shall in all cases whatsoever be a question of fact, and shall at all times be left to the jury."

The Federal Judge who tried this case snapped his finger at our constitution and promptly proceeded to say, that 'the two employees on the hand car assumed the risk of being upon the track on a hand-car, and that their death resulted from a risk which they had assumed."

It is true, the engineer did all he could to stop the engine. Had he not done so or had he not been watching, the courts must have said that the last clear chance to avert the injury lay in the hands of the engineer, and it was his duty to act, and so have let the case go to the jury, had the constitution of Oklahoma never have been written; but the engineer must grimly grit his teeth and ride on to certain destruction, conscious of the grinding, grasping indifference of his corporation to the defective appliances and devices in use. But the corporation was right; it had but little to fear. The widows of the two deceased men must bring their action for $2,000.00 or less or run the additional hazard of being removed to the United States court. They brought their suits for a large amount. The cases were removed and the judge who tried it, after listening to the evidence, took the case from the jury, with the announcement that the parties upon the track took the chances, assumed the risks and that no recovery could be had in the case, and it would be useless to permit it to go to a jury.

The books abound with decisions of the state courts one way and with federal decisions stating that the same identical elements of the state law enforced in that state by public policy of the state, by the legislation of the state, by the constitutional provisions of the state, will be enforced by the courts of the United States, yet upon the other hand when it comes to practical recognition through the working out of those principles, the book equally abounds with decisions where the federal judiciary perpetually and forever ignores the very laws it purports in another breath to honor and respect.

One more suggestion, and then I wish to propose a remedy. The suggestion is, that it is infinitely better, that within the limits of a state the law be uniform in its application. That no matter in what forum the law is applied or where people go for their remedies, the law should be the same, and that it shall be plain, speedy, prompt and adequate, and meted out as nearly as practicable, at the doorway of the party invoking its sanctions. It is of no consequence, or very little consequence, that the federal decisions of New York are harmonious with those of Oklahoma upon questions of local application, but it is infinitely important that the federal decisions upon question of local application should coincide with those of our own state courts.

And now for the remedy. The remedy lies in placing the differences and controversies between litigants back within the jurisdiction of the state courts; lay the ax in the root of the tree; let Congress repeal or at least, modify this federal policy. Some provision similar to the following would do the work:

"Provided, however, that the right of removal on account of diversity of citizenship shall not apply to corporations domiciled within a foreign state, or which transacts business within such foreign state, or for the commission of any tort within the jurisdiction of such foreign state, or for the breach of any contract made or to be carried out in whole or in part within such foreign state."

My suggestion now to you is, that, since your paper has perceived the wrong and given it publicity as you have, the awakening of conscience and the conviction of judgment which you have experienced, imposes upon you a duty, to-wit:—that of educating the bar and the judiciary, and thereby effectively reaching Congress with a universal, concentrated demand for remedial legislation touching this evil.

I regret to have taken so much of your time as I necessarily do writing this long letter, and yet I felt I could not escape the sense of duty my own knowledge carries with it.

Truly yours,

HENRY S. JOHNSTON.

Perry, Okla.

[Note.—The letter of our correspondent is much appreciated. Congress, we believe, intended by the conformity act to indicate that nothing should interfere with the constitutional purpose merely to furnish a court free from local prejudice. Ever since Judge Story started the "general law" heresy federal courts have been assuming more and more to be independent of state interpretation. What ought to be done is for Congress to declare they have no jurisdiction but to enforce as state law what the states declare such to be, and to enforce it as state courts enforce it. It is strange that congressmen elected only by citizens of states should permit anything else.—Editor.]

HUMOR OF THE LAW.

Men who are summoned for jury duty are ingenious in their excuses, and it often happens that the selection of a juror is the most diverting part of the case. One who was called in the county court here complained that he was deaf.

"You say you are deaf?' remarked the judge.

"Eh, what is that you say?" said the man.

"I said are you deaf?" observed the judge in a louder tone.

"You'll have to speak louder," was the reply, "or I can't hear you."

"I guess we'll excuse you," said the judge; "you can go."

The deaf man had no trouble in hearing the court's last remark, and sped out of the courtroom.

"I think that's one on the judge," observed one of the attorneys.—Columbus Dispatch.

Uncle Mose needing money, sold his pig to a wealthy Northern lawyer who had just bought the neighboring plantation. After a time, needing more money, he stole the pig and resold it, this time to a Judge Pickens, who lived "down the road a piece." Soon afterward the two gentlemen met, and, upon comparing notes, suspected what had happened. They confronted Uncle Mose. The old darkey cheerfully admitted his guilt. "Well," demanded Judge Pickens, "What are you going to do about it?" "Blessed ef I know, jedge," replied Uncle Mose, with a broad grin. "I'se no lawyer. I reckon I'll have to let yo' two gen'men settle it between you'selves."—Everybody's.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Adverse Possession**—Texas Statute.—To give a squatter title to 160 acres of land by adverse possession for 10 years, where he has actually occupied but a few acres, it must appear that he claimed certain designated land in addition, amounting to 160 acres in all; otherwise, his right is limited to the land occupied.—Houston Oil Co. of Texas v. Jenkins (C. C. A.) 182 Fed. 489.

2. **Arrest**—Peace Officers.—Under the rule of the common law, in force in states where not changed by statute, public officers specially charged with the enforcement of the laws and the preservation of the peace may lawfully arrest without a warrant and without view of the crime, when they have reasonable ground for believing that a felony has been committed.—Pritchett v. Sullivan (C. C. A.) 182 Fed. 480.

3. **Attachment**—Action on Bond.—In an action on an attachment for wrongfully attaching relator's pump, in which damages were claimed for the flooding of its mine by the pump being stopped, it was bound to prove that the attachment stopped the pump, resulting in the mine being flooded.—State ex rel. Endeavor Mining & Investment Co. v. Webb City & Carterville Foundry & Machine Works, Mo., 132 S. W. 18.

4. **Attorney and Client**—Compensation.—An attorney employed to defend a case, may, notwithstanding the pendency of the case, recover the value of the services rendered, where the employment is terminated because of the conduct of the client, amounting to a wrongful discharge.—Dempsey v. Dorrance, Mo., 132 S. W. 33.

5.——Contracts Between.—Contracts between an attorney and client will be closely scrutinized, and, unless shown to be fair, will not be enforced.—State v. Johnson, Iowa., 128 N. W. 837.

6 **Bail**—Nature and Scope.—The purpose of bail on appeal in a criminal case is only to suspend the execution of judgment so as to maintain the status quo pending the appeal.—Orr v. Jackson, Iowa., 128 N. W. 958.

7. **Bankruptcy**—Adjudication.— An alleged bankrupt who has absconded held to have acquired a domicile within the district for the greater portion of the preceding six months, and the court therefore had jurisdiction to declare him a bankrupt.—In re Oldstein (D. C.) 182 Fed. 409.

8.——Authority and Duty of Trustee.—Where a bankrupt was indorser of a note secured by a mortgage on realty, the holder, after foreclosing the mortgage, could prove against the bankrupt's estate only the difference between the amount of the debt and the value of the property.—In re Graves (D. C.) 182 Fed. 443.

9.——Exemptions.—The right of a bankrupt to exemptions is to be determined by the law of the state as construed by its highest court, if such a construction has been clearly given.—In re Baker (C. C. A.) 182 Fed. 392.

10.——Fees of Attorneys.—Attorneys who rendered services, before the appointment of a trustee for a bankrupt corporation, which led to the recovery of property fraudulently transferred by the bankrupt held entitled to an allowance of fees therefor as a part of the "reasonable expenses of such recovery."—In re Medina Quarry Co. (D. C.) 182 Fed. 508.

11.——Master's Report.—A master's failure to state in his report the character of the evidence on which his findings were based, etc., held not error in the absence of request for such showing.—In re Graves (D. C.) 182 Fed. 443.

12.——Preferences.—Release of a partner from liability for his copartner's defalcation, in consideration of the latter's conveyance of individual property to the creditor, held not a sufficient consideration to save the transaction from being a preference, voidable at the instance of a defaulter's trustee in bankruptcy.—Burgoyne v. McKillip (C. C. A.) 182 Fed. 452.

13.——Provable Claims.—Where a bankrupt has misappropriated funds, the person defrauded at his option was entitled to waive the crime, and assert a claim on an implied contract, and prove the same in bankruptcy.—Burgoyne v. McKillip (C. C. A.) 182 Fed. 452.

14.——Specifically Pledged Securities.—Where securities of customers of bankrupt stock brokers were sold by the trustee, all creditors who could identify securities in the broker's New York account as theirs were entitled to share in the proceeds of the sale thereof, unless their balance with the bankrupt would be wiped out by allowing such participation.—In re Carothers & Co. (D. C.) 182 Fed. 501.

15.——Stockbrokers.—Where specific securities of bad debtors of bankrupt stockbrokers are sold by the bankrupts' trustee, the bankrupts' general creditors were entitled to share in the proceeds thereof.—In re Carothers & Co. (D. C.) 182 Fed. 501.

16. **Banks and Banking**—Capital Stock.—The capital stock of a bank is a trust fund for the benefit of depositors and creditors.—Corbin Banking Co. v. Mitchell, Ky., 132 S. W. 426.

17.——Renewal of Notes.—Renewal of a note by a national bank, accomplished in the form of a discount, held not to constitute misapplication of the bank's funds.—Adler v. United States (C. C. A.) 182 Fed. 464.

18. **Bills and Notes**—Bona Fide Holder.—One executing a note while insane is not liable thereon, even in the hands of an innocent person.—Barnes v. McCarthy, Tex., 132 S. W. 85.

19. **Breach of Marriage Promise**—Marriage of Party Making Promise.—Where defendant before the time set for his marriage to plaintiff, has married another, and so put it out of his power to marry plaintiff, she then has a right to bring suit.—Bracken v. Dinning, Ky., 132 S. W. 425.

20. **Brokers**—Right to Commissions. — One whose contract is to sell at a price fixed by the owner held a mere middleman, and entitled to a commission from the owner, though having a contract with the buyer for a commission for buying.—Tasse v. Kindt, Wis., 128 N. W. 972.

21. **Burglary**—Indictment.—There is no fatal variance between an indictment alleging that accused entered the house of prosecutor with intent to steal his personal property and the evidence that accused stole property of a member of his family.—Polk v. State, Tex., 132 S. W. 134.

22.——What Constitutes. — Accused entered the waiting room of a railway company through an open door, then by opening a window of the ticket office, which occupied the center of the building to which entrance was provided by doors, the walls being of brick and extending from the floor to the ceiling, he secured entrance and appropriated certain money. Held, that the offence committed was burglary.—State v. Ferguson, Iowa, 128 N. W. 840.

23. **Cancellation of Instruments**—Mortgages. —Where defendant, after obtaining certain land by undue influence from an incompetent, placed a mortgage thereon, and the conveyance was thereafter set aside, the court should have declared the land to be the primary fund for payment of the mortgage.—Jefferson v. Rust, Iowa, 128 N. W. 954.

24. **Carriers**—Carriage of Live Stock.—Where the initial carrier is responsible for delay in transit of live stock to a certain point, and the connecting carrier for further delay, such carriers are jointly liable.—Texas Cent. Ry. Co. v. Hico Oil Mill, Tex., 132 S. W. 381.

25.——Duty to Protect Passengers.—A carrier of passengers is as much bound to protect them from humiliation and insult as from physical injury.—May v. Shreveport Traction Co., La., 53 So. 671.

26.——Injury to Property.—In an action against a carrier for damages to personal property in transit, if the carrier wishes to contend that the wholesale and not the retail price of the property should govern in fixing the amount of damages, facts supporting such contention should be specially pleaded.—Houston & T. C. R. Co. v. Barden, Tex., 132 S. W. 83.

27.——Loss of Baggage.—A railroad company held liable for the loss of hand baggage carried with a passenger on a sleeping car under a separate contract with the sleeping car company; the same duty to protect the person and baggage of the passenger resting on both companies under their separate contracts. —Nelson v. Illinois Cent. R. Co., Miss., 53 So. 619.

28. **Charities**—Testamentary Gifts.—A testamentary gift to a city for the maintenance of a manual training school held not invalid because the gift impelled the city to raise a specified sum for the purpose.—Maxcy v. City of Oshkosh, Wis., 128 N. W. 899.

29. **Constitutional Law**—Due Process of Law.—Laws 1908 regulating the sale of merchandise in bulk, held not repugnant to the equal protection clause of the fourteenth amendment of the federal Constitution.—Wm. R. Moore Dry Goods Co. v. Rowe & Carithers, Miss., 53 So. 626.

30.——Employment of Women.—Laws 1909, limiting the hours of employment of females save in canning establishments and places where perishable fruits, etc., are preserved, held not to be class legislation because of the exception as to canning establishments, etc.—Withey v. Bloem, Mich., 128 N. W. 913.

31.——Judicial Review.—Where the Legislature has erected a tribunal to ascertain and declare the result of an election on any subject, the decision of the tribunal cannot be reviewed by the courts.—Shibley v. Ft. Smith & Van Buren Dist., Ark., 132 S. W. 444.

32.——Repeal of Corporate Charter.—The creditors of a corporation are not parties to the contract created with the state by its corporate franchise, and hence the repeal of such franchise is not an infringement of any of the creditors' constitutional rights.—Hawley v. Bonanza Queen Mining Co., Wash., 111 Pac. 1073.

33.——Taxation.—A statute authorizing assessments for benefits for a local improvement held not to impair the obligation of contracts by making the lien therefor superior to liens of prior mortgages.—Shibley v. Ft. Smith & Van Buren Dist., Ark., 132 S. W. 444.

34. **Contracts**—Breach.—A party to a contract placing himself in a position whereby he is unable to carry out the contract held liable as for a breach thereof.—Bell v. Shields, Idaho, 111 Pac. 1076.

35.——Tender of Performance.—One intending to sue to enforce a mutual covenant must show a tender of performance or prove that a tender, if made, would have been refused.—Cornett v. Best, Mo., 132 S. W. 35.

36.——Threats.—It is not necessary that threats in order to procure the execution of a contract be made directly to the person to be influenced, if they are made to a third person to be communicated to him, and they are so communicated. — Price v. Bank of Poynette, Wis., 128 N. W. 895.

37.——What Law Governs.—Personal contracts are interpreted by the law of the place where they are made, but the question of the application of the statute of limitations, being merely in relation to the remedy, is regulated by the law in the forum in which the suit is brought.—Rock Island Plow Co. v. Masterson, Ark., 132 S. W. 216.

38. **Corporations**—Dissolution. — The effect of dissolution of a corporation is to abate all actions then pending against it, in the absence of a saving statute, both at law and in equity. —Hawley v. Bonanza Queen Mining Co., Wash., 111 Pac. 1073.

39.——Illegal Sale of Original Stock.—Minority stockholders held entitled, on the refusal of the officers to act, to sue to set aside an illegal sale of original stock at less than par.—Anderson v. Scandia Mining Syndicate, S. D., 128 N. W. 1016.

40.——Personal Liability of Manager.—The manager of a business conducted in the name of a foreign corporation, not having complied with statutes as to foreign corporations, is personally liable for torts committed in carrying on the business.—Rowden v. Daniell, Mo., 132 S. W. 23.

41.——Purpose Stated in Charter.—The purpose stated in the charter of a corporation indicates the purpose for which the corporation is created, and the burden is upon those who challenged the primary purpose stated, to show that it is something different.—Commonwealth v. Filbert Paving & Construction Co., Pa., 78 Atl. 104.

42.——Real Estate.—The holding of lands interminably by a "holding" company held not a business.—Commonwealth v. Louisville Property Co., Ky., 132 S. W. 413.

43.——Service of Summons.—A corporation, by providing that its secretary shall be served with citation, cannot avoid effect of Acts 1908, providing that a corporation may be served by leaving citation at its office.—Abney v. Louisiana & N. W. R. Co., La., 53 So. 678.

44. **Criminal Law** — Cross-Examination. — On a trial in the federal court it is improper for the judge to cross-examine defendant's witnesses in such a manner as to indicate an opinion that accused should be convicted.—Adler v. United States (C. C. A.) 182 Fed. 464.

45.——Evidence.—The constitutional right of accused to be confronted with the witnesses against him held not to apply to documentary evidence.—State v. Donata, La., 53 So. 662.

46.——Instructions.—In a criminal prosecution for alleged fraudulent use of the mails, in which defendant introduced evidence of his good reputation, the giving of an instruction that, if defendant had a good reputation, "it only accentuates the measure of his responsibility," and only enabled him the better to impose upon others, was error.—Hume v. United States (C. C. A.) 182 Fed. 485.

47.——Other Offenses.—Where, on a prosecution for a sale of liquor on a specified day, the state offers evidence of several sales on other days, and there is an acquittal, there can be no further prosecution as to any of such sales.—State v. Tatman, Mo., 132 S. W. 42.

48.——Party Liable.—Knowledge by defendant that another is committing a crime is not sufficient to make him guilty of such crime.—State v. Crawford, Mo., 132 S. W. 43.

49.——Police Power.—A municipal ordinance declaring that "picketing" for the purpose of intimidating and threatening the employes of a private industrial concern, is misdemeanor, is a valid exercise of municipal power.—Ex parte Williams, Cal., 111 Pac. 1035.

50. **Damages**—Excessive Claim.— Plaintiff's claim of damages to a greater amount than his pleadings show him to be entitled to, does not prevent his recovery up to the amount of the obligation upon which his claim is founded.—Maughlin Mill Co. v. Hamilton, Wash., 111 Pac. 1067.

51. **Death** — Action Surviving.—A cause of action for damages for the death of railroad employes by the negligence of a fellow servant does not survive under the fellow servant act of 1897.—Sumner v. Missouri Pac. Ry. Co., Mo., 132 S. W. 32.

52.——Right to Sue for Death of Parent.—An adult son held to possess a pecuniary interest in the life of his mother so as to enable him to sue for her negligent death.—Missouri, K. & T. Ry. Co. of Texas v. Butts, Tex., 132 S. W. 88.

53. **Deeds**—Delivery.—Where a grantor or one acting with his authority passes the deed over into the possession or control of the grantee, with intent thereby to pass the title to the property described, there is a valid delivery.—Schurz v. Schurz, Iowa, 128 N. W. 944.

54.——Rights of Grantee.—A grantee in a deed who attempts to procure a new deed from the grantor, because of a doubt as to the meaning of the original deed does not lose any rights granted by the original deed.—Kentucky Diamond Mining & Developing Co. v. Kentucky Transvaal Diamond Co., Ky., 132 S. W. 397.

55. **Descent and Distribution** — Rights of Heirs.—The position of heirs is no stronger than the position of their ancestor, and where he could not assert a claim to land they will not be permitted to do so.—Pellow v. Arctic Mining Co., Mich., 128 N. W. 918.

56. **Discovery**—Federal Statutes. — To authorize a federal court to order a party to produce private books for inspection by the adverse party in an action at law, it must be shown that the evidence is pertinent, that they are in possession of the party moved against, and that the moving party cannot obtain the evidence elsewhere.—Rosenberger v. Schubert (C. C.) 182 Fed. 411.

57. **Divorce**—Community Property.— Where a divorce is granted to a wife for the husband's adultery, the court may in its discretion give all the community property to her.—Aston v. Aston, Cal., 111 Pac. 1035.

58. **Dower**—Equitable Estoppel. — A wife, who accepted the provision of her husband's will giving her all his real estate so long as she should remain his widow, and for many years managed the estate and enjoyed the rents and profits thereof without claiming her distributive share, held not estopped from claiming it; no one having been misled to his prejudice.—Archer v. Barnes, Iowa, 128 N. W. 969.

59.——Mortgaged Lands.—A widow's dower in mortgaged lands is not barred by a foreclosure decree, though she was a party to the suit, unless her right to dower was put in issue.—Fourche River Lumber Co. v. Walker, Ark., 132 S. W. 451.

60. **Easements**—Way by Necessity.—Unless a vendor agrees to give the purchaser a passageway over his remaining land to a public road, the conveyance does not carry with it the right to such way, unless the land sold has no other outlet to the road except over the remaining land.—Harris v. Caperton, Ky., 132 S. W. 157.

61. **Estoppel**—Claim in Action.—A party may be bound in one suit by his pleading in a former suit, and in a proper case should not be permitted to assert matter contradictory to the position taken in his former pleading.—Michalski v. Grace, Mo., 132 S. W. 333.

62. **Evidence**—Admissibility. — In a controversy over the distribution of an estate wherein heirship was involved, a widow's testimony as to the family history of her deceased husband as she got it from him held admissible.—In re Carroll's Estate, Iowa, 128 N. W. 929.

63.——Admissions by Agents.——A report by a conductor to a station agent for a fire set by his train held admissible in evidence as in the nature of an admission.—Lemen v. Kansas City Southern Ry Co., Mo., 132 S. W. 13.

64.——Judicial Notice.—The court takes judicial notice of the fact that locust trees do not make desirable or attractive shade trees.—Town of LaGrange v. Overstreet, Ky., 132 S. W. 169.

65.——Orders of Railroad Commission.—The orders of the State Railroad Commission are presumably proper and legal and the burden of showing that they are not is upon the person attacking them.—Texas & P. Ry. Co. v. Railroad Commission of Louisiana, La., 53 So. 660.

66.——Presumptions.—It is presumed that a letter, properly posted and mailed, was received in the usual time.—Western Union Telegraph Co. v. McDavid, Tex., 132 S. W. 115.

67. **Explosives**—Negligence. — In an action for injury to property near a railroad yard by explosion of a car of dynamite therein, held that the care that the railroad's employes must exercise in the operation of cars, so far as the public is concerned, is determinable by principles of law, and not by such company's rules for employes handling dynamite cars, or the rules of the company which manufactured the dynamite.—Southern Ry. Co. v. Stewart, Ky., 132 S. W. 435.

68. **False Imprisonment**—Issues and Proof.—In an action for false imprisonment, where plaintiff alleges want of probable cause for the arrest, a general denial puts the allegation in issue and authorizes defendant to show the existence of such cause.—Pritchett v. Sullivan (C. C. A.) 182 Fed. 480.

69. **Fire Insurance**—Increase of Hazard. — A provision of a policy, making it void if the hazard be increased by any means within the control or knowledge of the insured, held not to avoid the policy because, on attempt of a third person to burn the property, insured did not notify the insurer, or do anything to prevent its repetition—Williamsburg City Fire Ins. Co. v. Weeks Drug Co., Tex., 132 S. W. 121.

70. **Fixtures** — Between Land-Owners and Mortgagee.—All buildings put on mortgaged real estate are immovable and are subject to the mortgage.—Coltharp v. West, La., 53 So. 675.

71. **Fraudulent Conveyances** — Preferring Creditors.—In the absence of statute, an insolvent debtor may prefer one creditor to another.—Corry v. Shea, Wis., 128 N. W. 892.

72. **Habeas Corpus**—Nature and Scope.—A habeas corpus proceeding is intended to be summary, and it is not a criminal proceeding. —Orr v. Jackson, Iowa, 128 N. W. 958.

73. **Highways** — Automobiles.—The right to operate an automobile carries with it the right to make the noises incidental to its operation.—Brown v. Thorne, Wash., 111 Pac. 1047.

74. **Homicide**—Evidence.—The inquiry into the character of decedent held limited to his violent and dangerous character to be made only by evidence of his general reputation for such character.—Lucas v. Commonwealth, Ky., 132 S. W. 416.

75.——Self-Defense.—One has the same right to defend against a threatened attack as against an actual attack.—Payton v. State Tex., 132 S. W. 127.

76. **Infants**—Juvenile Courts. — A juvenile court has no jurisdiction over capital offenses committed by minors under 17 years of age.—State v. Howard, La., 53 So. 677.

77. **Injunction**—Action on Bond.—Attorney's fees and nontaxable costs and expenses are recoverable in an action on an injunction bond, where the injunction was auxiliary to some other relief, but not if the injunction was the sole relief sought in the action.—Bartram v. Ohio & B. S. R. Co., Ky., 132 S. W. 188.

78.——Dissolution.—Where there are several defendants in injunction, and only one applies for a dissolution, he will have to make a very good showing to obtain the granting of his prayer.—Bradley v. Davis, La., 53 So. 653.

79.——Motion to Dissolve.—A decree of permanent injunction may not be entered on overruling a motion to dissolve a temporary writ. —Bowman v. City of Waverly, Iowa, 128 N. W. 950.

80.——Unlawful Contracts.—That an unlawful sale of a railroad ticket was to a decoy held no defense to contempt proceedings for violation of injunction.—Missouri, K. & T. Ry. Co. v. McCrary, (C. C.) 182 Fed. 401.

81. **Insane Persons**—Conveyances.—Where a conveyance had been obtained from an incompetent with knowledge of his disability, the incompetent's guardian was only required to tender back what the ward had left of the consideration as a condition to having the conveyance vacated.—Jefferson v. Rust, Iowa, 128 N. W. 954.

82. **Interpleader** — Lien of Materialmen.—An owner, as against several conflicting claims for materials furnished to a contractor, held a mere stakeholder of a fund, and hence on a bill of interpleader to require them to litigate their claims was entitled to costs and a reasonable attorney's fee out of the fund.—Bellharz v. Illingsworth, Tex., 132 S. W. 106.

83.——Persons Entitled. —In an action by an assignee of insurance policies in which the assignor claimed interest in the proceeds, held, that the claimant having derivative rights and a privity of interest, the insurer was entitled to interplead them.—Love v. Hartford Life Ins. Co., Mo., 132 S. W. 335.

84. **Interstate Commerce**—Foreign Corporations.—An unlicensed foreign corporation held entitled to sue on a contract constituting a transaction of interstate commerce.—Southern Flour & Grain Co. v. McGeehan, Wis., 128 N. W. 879.

85.——Transportation of Liquor.—The Legislature cannot prevent a resident of Iowa from having liquor shipped to him from another state for his personal use, nor from removing it from the express or railway office to his home or place of business.—State v. Wignall, Iowa, 128 N. W. 935.

86. **Intoxicating Liquors**—Illegal Sale.—One who solicits a person to purchase liquor and pilots him to another who has the liquor and sells it is punishable as a principal.—Steen v. State, Ok., 111 Pac. 1097.

87.——Local Option Election.—The use of the Holy Bible and a bottle with a snake protruding from the mouth thereof, as emblems on the ballots in a local option election, held to avoid the same; a representation of the Bible being prohibited by Ky. St. sec. 1453. (Russell's St. sec. 4012).—Coney v. Hardwick, Ky., 132 S. W. 140.

88. **Judgment**—Conclusiveness. — The rule that a judgment is conclusive not only of all matters actually determined, but of all matters which might have been decided, refers only to matters properly belonging to the subject of the controversy and within the issues. —Fourche River Lumber Co. v. Walker, Ark., 132 S. W. 451.

89. **Justices of the Peace**—Recall of Process. —A justice of the peace can recall process issued by him if it was improvidently issued, or if, after being rightfully issued, it should under the law be recalled.—Wadkins v. Merchants' Bank of Vandervoort, Ark., 132 S. W. 218.

90. **Life Insurance**—Sound Health.—A provision that a policy should not be valid unless insured was alive and in sound health on the date of delivery held unavailable, unless the unsoundness of health occurred between the date of the application and medical examination and the delivery of the policy.—Western & Southern Life Ins. Co. v. Davis, Ky., 132 S. W. 410.

91. **Malicious Prosecution**—Want of Probable Cause.—An action for malicious prosecution of a civil suit cannot be maintained, in the absence of proof of malice and want of probable cause.—Talbott v. Great Western Plaster Co., Mo., 132 S. W. 15.

92. **Master and Servant** — Admissibility of Evidence.—Where a master insists that it is not feasible to guard dangerous machinery evidence that a guard was provided after injury to an employe from the machinery held admissible.—West v. Bayfield Mill Co., Wis., 128 N. W. 992.

93.——Labor Liens.—In order to fix a lien for labor it must appear that the person claiming such lien is within the class named in the statute, and that the labor or services performed by him were performed under the conditions named in the statute.—Bush Bros. Lumber & Milling Co. v. Eastwood, Tex., 132 S. W. 389.

94.——Medical Treatment.—A railroad company inaugurating a plan of creating a fund for care of its sick and injured employes by deducting each month 50 cents from the wages of each employe, and in execution of the trust contracting with a doctor to treat in its hospital all such sick and injured in consideration of the fund so collected, held not liable for malpractice of the doctor, in the absence of evidence that it was promoting its own business through such charity.—Texas Cent. R. Co. v. Zumwalt, Tex., 132 S. W. 113.

95.——Negligence.—A master directing employes to use gasoline to exterminate vermin, in a caboose, held not as a matter of law negligent.—Allegheny Improvement Co. v. Weir, Ark., 132 S. W. 462.

96.——Safe Place to Work.—Where temporary structures, erected to complete the main structure, are put up by the same workmen engaged on the main structure, the workmen who have put it up assume the risk of such structures being unsafe.—Texas Co. v. Strange, Tex., 132 S. W. 370.

97. **Mines and Minerals**—What are Minerals. —A diamond is a "mineral."—Kentucky Diamond Mining & Developing Co. v. Kentucky Transvaal Diamond Co., Ky., 132 S. W. 397.

98. **Mortgages**—Bona Fide Purchaser.—The fact that a mortgage was never delivered, and that the consideration had failed, would not prevent enforcement by a bona fide transferee before maturity.—Brown v. Brown, Ark., 132 S. W. 220.

99.——Foreclosure.—Where no sheriff's deed was issued in mortgage foreclosure, the title of the owner who became the assignee of the certificate of sale under the decree of foreclosure was not divested.—Keller v. Harrison, Iowa, 128 N. W. 851.

100. **Municipal Corporations**—Excavations in Street.—Municipality making excavations in a public street is held to the same degree of

care to prevent injury as an individual.—Allen v. Town of Minden, La., 53 So. 666.

101.——Ordinances. — Courts will not interfere with the municipal affairs of a city within the limits of the power conferred by the statute, where it is not shown that in the enactment of ordinances the council were influenced by malice, fraud, or caprice.—Town of LaGrange v. Overstreet, Ky., 132 S. W. 169.

102.——Public Improvements.—A contract for public improvements which provides for a certain time of completion cannot be extended by an ordinance of the common council passed after the time of performance has expired.—Paul v. Burress, Mo., 132 S. W. 330.

103.——Right to Statutory Lien.—A municipal corporation held entitled to enforce a statutory lien for the cost of a sidewalk, constructed adjacent to a landowner's property, after the failure of the landowner on notice to construct it himself.—Theisen v. Whiddo, Fla., 53 So. 642.

104. **Negligence**—Acts in Emergency.—It is not contributory negligence for a party to expose himself to risk in endeavoring to save the lives of others, provided his conduct is not rash or reckless.—Gulf, C. & S. F. Ry. Co. v. Brooks, Tex., 132 S. W. 95.

105.——Liability of Contractor.—After the work of a contractor in constructing a concrete walk over a branch had been accepted by an improvement district, the contractor could not be held liable for injuries to a third person because of the absence of either a railing or any light on the walk.—Memphis Asphalt & Paving Co. v. Fleming, Ark., 132 S. W. 222.

106. **Obscenity**—Giving Picture to Child.—One charged with delivering an obscene picture to a female about 15 years of age may not show in justification that she had previously received other lewd pictures.——Holcomb v. State, Tex., 132 S. W. 562.

107. **Partition**—Acts of Parties.—Tenants in common cannot, after a judgment lien has become operative against one of them and has been levied upon his undivided interest, make a voluntary partition which will bind the judgment creditors.—Simmons v. Gordon, Miss., 53 So. 623.

108.——Parties.—Plaintiff in partition subsequent to his co-tenant's conveyance in fee of a part of the common estate, held required to make the grantee a party.—Pellow v. Artic Mining Co., Mich., 128 N. W. 918.

109. **Perpetuities**—Common Law Rule.—The common-law rule against perpetuities is the same, whether the estate limited consists of realty or personalty.—Thomas v. Thomas, Miss., 53 So. 630.

110. **Pleading**—Nature of Issues.—A plea of another action pending is a plea in abatement, and not in bar, and eliminates other matters.—Jefferson v. Rust, Iowa, 128 N. W. 954.

111. **Pledges**—Rights of Pledge.—A holder of collateral security must ordinarily, on converting it into money, apply the proceeds to the payment of the debt, and will hold the surplus as trustee of the debtor to be paid over to him on demand.—Swofford Bros. Dry Goods Co. v. Randolph, Mo., 132 S. W. 255.

112. **Principal and Agent**—Mistake in Valuation of Land.—If defendant was employed by plaintiff to examine land and determine at what valuation in his judgment, plaintiff should take it in exchange for other property, and in good faith gave plaintiff his opinion thereon, he would not be liable for loss to plaintiff in exchanging, though he was mistaken as to the quality or value of the land.—Durward v. Hubbell, Iowa, 128 N. W. 953.

113. **Railroads** — Passengers.—A passenger leaving the train at a station to buy a ticket to carry him beyond the station held not to cease to be a passenger.—Harkless v. Chicago, R. I. & P. Ry. Co., Mo., 132 S. W. 29.

114. **Removal of Causes**—Citizenship.—"Citizenship," under the statute of 1875, held to mean residence with intention of permanently remaining.—Harding v. Standard Oil Co. (C. C.) 182 Fed. 421.

115. **Sales**—Acceptance.—A buyer of goods held not to have accepted them where they were shipped prematurely in contravention of his order and were destroyed by fire in the possession of the carrier.—Arons v. Cummings, Me., 78 Atl. 98.

116.——Contract.—A plaintiff who has not prepaid freight on goods sold, according to the terms of the contract, cannot maintain an action for breach.—Hessig-Ellis Drug Co. v. Priesmeyer, Mo., 132 S. W. 329.

117.——Damages for Breach.—Where a seller of goods for delivery within a specified time fails to make delivery on the last day, the buyer may go into the open market on the following day and charge the seller with the cost less what would have been the cost under the contract.—Hafner Mfg. Co. v. Lieber Lumber & Shingle Co., La., 53 So. 646.

118.——Shortage.—Buyers, who accepted a delivery with full knowledge of a shortage, held to have waived the condition requiring full delivery, rendering them liable for the price of the goods delivered.—Lorraine Mfg. Co. v. Oshinsky, (C. C.) 182 Fed. 407.

119. **Searches and Seizures**—Arrest. — Defendants held to have no right to complain on the ground of unreasonable search and seizure where the sheriff on arresting them took their property into his care.—State v. Hassan, Iowa, 128 N. W. 960.

120. **Set-Off and Counterclaim**—Right of Defendant.—A defendant may, as against a nonresident plaintiff, set up in reconvention any cause of action it may have against him.—Hafner Mfg. Co. v. Lieber Lumber & Shingle Co., La., 53 So. 646.

121. **Street Railroads**—Excessive Speed. — The operation of a street car at less than the maximum speed may be negligence if the particular circumstances make it dangerous to so operate it.—Brandt v. United Rys. Co. of St. Louis, Mo., 132 S. W. 39.

122.——Negligence.—That a motorman sees a child four years old approaching the street car track from the sidewalk is sufficient to require him to stop the car to prevent injury.—Simon v. Metropolitan St. Ry. Co., Mo., 132 S. W. 250.

123. **Taxation**—Tax Sale Certificate.—A tax sale certificate is a lien against the land, but no debt or personal charge against the owner.—Corry v. Shea, Wis., 128 N. W. 892.

124. **Telegraphs and Telephones**—Negligence in Delivering Message.—A telegraph company is liable for all damages flowing directly from a failure to deliver messages as soon as practicable after transmission.—Western Union Telegraph Co. v. Lawson (C. C. A.) 182 Fed. 369.

125. **Tenancy in Common**—Rights of Cotenants.—Cotenants acting in concert may subdivide a part of the common estate, so as to create separate freeholds and sell the same.—Pellow v. Arctic Mining Co., Mich., 128 N. W. 918.

126. **Torts**—Joint Tort Feasors.—Where two or more persons owe a common duty to another, they are jointly and severally liable for injuries caused to such other by a common neglect of such duty.—Nelson v. Illinois Cent. R. Co., Miss., 53 So. 619.

127. **Trusts**—Property of Trustee.—Though a demand may be founded on a breach of trust, the entire estate of a recreant trustee is not thereby necessarily impressed with a trust.—Burgoyne v. McKillip (C. C. A.) 182 Fed. 452.

128. **Vendor and Purchaser**—Records as Notice.—In the absence of a statute to the contrary, the record of a deed continues to be constructive notice notwithstanding its destruction.—Houston Oil Co. of Texas v. Wilhelm (C. C. A.) 182 Fed. 474.

129.——Unrecorded Deeds.—An unrecorded deed cannot prevail against the title of an innocent purchaser for value, without notice of the deed.—Rockcastle Mining, Lumber & Oil Co. v. Isaacs, Ky., 132 S. W. 165.

130. **Waters and Water Courses**—Riparian Owners.—In order to vest title in a riparian owner on a river by accretion, the constitutive sedimentary deposits along the shore must be gradual, imperceptible, and natural.—State of Kansas v. Meriwther (C. C. A.) 182 Fed. 457.